

HOUSE No. 1687

By Mrs. Poirier of North Attleborough, petition of Elizabeth A. Poirier and others relative to information provided to women seeking abortions. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Elizabeth A. Poirier	Angelo M. Scaccia
Michael F. Rush	Anthony J. Verga
Paul J. Donato	Colleen M. Garry
John P. Fresolo	Viriato Manuel deMacedo
Jeffrey Davis Perry	Stephen P. LeDuc
Paul Kujawski	Walter F. Timilty
David B. Sullivan	
A. Stephen Tobin	

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO A WOMAN'S RIGHT TO KNOW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. The General Court finds that:—
- 2 (1) The Commonwealth has an important interest in ensuring that
- 3 women seeking abortions are provided a fully informed choice and a
- 4 sufficient period of time to reflect on the information provided, “to
- 5 reduce the risk that a woman may elect an abortion, only to discover
- 6 later, with devastating psychological consequences, that her decision
- 7 was not fully informed.” Planned Parenthood of Southeastern Penn-
- 8 sylvania v. Casey, 505 U.S. 833, 882 (1992)
- 9 (2) Key provisions of Section 12S of Chapter 112 of the General
- 10 Laws are not being enforced due to the continued operation of an
- 11 out-dated declaratory judgment of the federal district court of
- 12 Massachusetts issued before the United States Supreme court upheld
- 13 the constitutionality of informed consent and reflection period pro-
- 14 tections in its 1992 Casey decision, and other provisions are being
- 15 implemented in such a manner as to provide an inadequate opportu-
- 16 nity for women seeking abortions to make a fully informed choice.

17 Thus, the purpose of the Woman's Right to Know Act is to ensure
18 that every woman considering an abortion receives complete infor-
19 mation on the procedure, the risks, the status of her unborn child,
20 and her alternatives, and sufficient reflection time, thereby reducing
21 the possibility of serious, lasting, or life threatening consequences of
22 a medical, emotional and psychological nature.

1 SECTION 2. Chapter 112 of the General Laws is hereby amended
2 by striking the first paragraph of Section 12S, appearing at lines 1
3 through 19 in the 2000 Official Edition of the General Laws of
4 Massachusetts, and inserting the following:—

5 Section 12S. No physician may perform an abortion upon a preg-
6 nant woman without first obtaining her written informed consent in
7 compliance with the following procedures, unless in a case of a med-
8 ical emergency, compliance would cause the pregnant woman's
9 death or the woman's substantial and irreversible impairment of a
10 major bodily function. The referring physician, the physician per-
11 forming the abortion, or either physician's agent must provide in a
12 manner enabling the pregnant woman to receive at least twenty-four
13 hours before the time an abortion is scheduled to be performed a
14 printed pamphlet, the internet address to a state-sponsored website,
15 or toll free number for an audio recording, all of which are created
16 and maintained by the commissioner of public health, and which
17 communicate the following general information:— a written notice
18 of the patients' rights guaranteed by Section 70E of Chapter 111 of
19 the General Laws; a comprehensive list of the names, addresses, and
20 contact information of public and private agencies and services
21 available in the Commonwealth to provide medical, financial and
22 other assistance to a woman through pregnancy, upon childbirth, and
23 while her child is dependent, with prenatal, childbirth, neonatal, chil-
24 drearing, and adoption services; a description of the probable
25 anatomical and physiological characteristics of the unborn child at
26 two week gestational increments from fertilization to full term,
27 including color photographs or if a representative photograph is not
28 available, realistic drawings of the developing unborn child at two
29 week increments, and including written information about brain and
30 heart function and the presence of external members and internal
31 organs at each stage of development; a description of the various
32 methods of abortion, and the physical, psychological and emotional

33 risks or medical complications commonly associated with each
34 method; a description of the physical, psychological and emotional
35 risks or medical complications of pregnancy and delivery; a descrip-
36 tion of the support obligations of the father of a child born alive; and
37 statements that, under the law of the Commonwealth, a person's
38 refusal to undergo abortion does not constitute grounds for the denial
39 of public assistance, that the law permits adoptive parents to pay the
40 cost of prenatal care, childbirth and neonatal care, that the father of
41 the unborn child is liable to assist in the support of the child, even in
42 instances where he has offered to pay for the abortion, that it is
43 unlawful for any individual to coerce a woman to undergo an abor-
44 tion, and that any physician who performs an abortion upon a
45 woman without obtaining her informed consent may be liable to her
46 for damages in a civil action at law. The texts of the pamphlet, web-
47 site and audio recording shall be identical in content, incorporate the
48 definitions of abortion, pregnancy, and unborn child as set out in
49 Section 12K of this Chapter, be objective, nonjudgmental and
50 designed to convey only accurate scientific information when dis-
51 cussing fetal development and medical risks, be written in a manner
52 designed to permit a person unfamiliar with medical terminology to
53 understand its purpose and content, and be published in English,
54 Spanish, and Portuguese, and in each other language which is the
55 primary language of 2% or more of the state's population. Prior to
56 the scheduled abortion and before the woman provides her written
57 consent to the abortion, the referring physician or the physician per-
58 forming the abortion must orally inform the woman of:— the nature
59 of the proposed abortion method and associated risks and alterna-
60 tives that a reasonable patient in the woman's position would con-
61 sider material to the decision of whether to undergo the abortion; the
62 probable gestational age of the unborn child at the time the abortion
63 is to be performed; and the probable anatomical and physiological
64 characteristics of the unborn child at the time the abortion is to be
65 performed. Also prior to the scheduled abortion and before the
66 woman provides her written consent to the abortion, the referring
67 physician, the physician performing the abortion, or either physi-
68 cian's agent shall orally inform the woman that alternatives to abor-
69 tion are available, ask the woman if she has seen the information,
70 including the list of abortion alternative agencies, provided in the
71 pamphlet, website or recorded telephone message described in this

72 section, give the woman a copy of the pamphlet if she requests one
73 at this time, and provide the woman with an opportunity to contact
74 abortion alternative agencies at this time should she so desire.
75 Before the scheduled abortion but after she is provided with the
76 opportunity to receive the information described in this section, if
77 she decides to obtain the abortion, the woman shall sign a consent
78 form. The form shall indicate that she has been offered the informa-
79 tion described in this section and does provide her informed consent
80 to the abortion. The physician performing the abortion shall main-
81 tain the signed consent form in the physician's files and destroy it
82 seven years after the date upon which the abortion is performed. The
83 commissioner of public health shall create and publish within ninety
84 days after the effective date of this act, and shall review on an annual
85 basis and update if necessary, the pamphlet, website, telephone
86 recordings, and consent form required by this section. The commis-
87 sioner shall avail at no cost and in appropriate number to any institu-
88 tion, clinic or physician's office providing abortions the printed
89 materials required under this section.

1 SECTION 3. Chapter 111, Section 70E is hereby amended by
2 adding "institution, clinic, or physician's office providing abortions,"
3 immediately after the word "clinic," and before the word "infirmary"
4 appearing at line 2 of the 2000 Official Edition of the General Laws
5 of Massachusetts.

1 SECTION 4. If any one or more provision, section, sentence,
2 clause, phrase or word of this Act or the application thereof to any
3 person or circumstance is found by a court to be unconstitutional or
4 otherwise unenforceable, the same is hereby declared to be severable
5 and the balance of this Act shall remain effective notwithstanding.
6 The General Court hereby declares that it would have passed this
7 Act, and each provision, section, sentence, clause, phrase or word
8 thereof, even if any one or more provision, section, sentence, clause,
9 phrase, or word would be found by a court to be unconstitutional or
10 otherwise unenforceable.

1 SECTION 5. This Act shall take effect immediately after its pas-
2 sage by the General Court and approval by the Governor, or upon its
3 otherwise becoming a law.